United Nations S/AC.37/2003/3

Security Council

Distr.: General
31 January 2003
English
Original: French

Security Council Committee established pursuant to resolution 1267 (1999)

Letter dated 28 January 2003 from the Permanent Representative of Belgium to the United Nations addressed to the Chairman of the Committee

I have the honour to transmit herewith the national report of Belgium, which my authorities have just forwarded to me (see annex). This report was prepared in implementation of paragraph 6 of resolution 1390 (2002).

(*Signed*) Jean **de Ruyt**
Ambassador
Permanent Representative of Belgium to the United Nations

03-23449 (E) 060203 060203

Annex to the letter dated 28 January 2003 from the Permanent Representative of Belgium to the United Nations addressed to the Chairman of the Committee

Report of the Kingdom of Belgium in implementation of Security Council resolution 1390 (2002)

A. *Legislative and/or administrative measures taken in order to freeze the funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list mentioned in paragraph 2 of resolution 1390 (2002), including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and to ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory.*

1. The measures adopted by the Kingdom of Belgium since the issuance of Security Council resolutions 1277 (1999) and 1333 (2000) make it possible to implement resolution 1390 (2002), taking into account the amendments made to the list, in order to freeze funds and other financial assets.

2. The Committee will find in the attached table a list of the various measures which have been adopted pursuant to Security Council resolutions 1267 (1999), 1333 (2000) and 1390 (2002) to implement those resolutions at the European level and in Belgium as regards the financial embargo.

3. The measures comprise the royal decree of 17 February 2000 on restrictive measures against the Taliban of Afghanistan, adopted on the basis of the law of 11 May 1995 on the implementation of decisions of the United Nations Security Council, which entered into force on 15 March 2000. The lists of individuals covered by these measures, transmitted by the "Afghanistan" Committee, were published by ministerial decree of 15 June 2000, amended by ministerial decrees of 23 November 2001, and 1 July, 26 and 27 September, 24 and 30 October, 12 and 14 November and 10 December 2002.

4. Moreover, regulation EC/881 of 27 May 2002 of the Council of the European Union standardizes all community measures relating to the implementation of Security Council resolution 1390 (2002). Under the community legal rules, this regulation is directly applicable in the Belgian legal system.

5. Investigations are under way in relation to the freezing of funds and other financial assets or economic resources of the individuals, groups, undertakings and entities referred to in the list mentioned in paragraph 2 of Security Council resolution 1390 (2002).

B. *All measures they have taken to prevent the entry into or the transit through their territories of the individuals as referred to in the list mentioned in paragraph 2 of resolution 1390 (2002).*

6. Pursuant to resolution 1390 (2002), access to and transit through the territory of the individuals included in the United Nations consolidated list (on the basis of resolutions 1267 (1999), 1333 (2000) and 1390 (2002)) are prohibited.

7. In order to enforce this prohibition, the Aliens Office of the Federal Department of the Interior works in close cooperation with:

– diplomatic and consular offices of the Federal Department of Foreign Affairs;

– the federal police.

The United Nations consolidated list has been computerized by the Aliens Office, which facilitates its day-to-day consultation.

8. *Issuance of visas*: Belgian diplomatic and consular offices abroad implement the relevant visa regulations and are responsible for the subsequent issuance of visas.

Every month the Federal Department of Foreign Affairs sends a CD-ROM containing the United Nations consolidated list to all the designated Belgian diplomatic and consular offices.

Whenever an alien applies for a visa at a designated Belgian diplomatic or consular office abroad, the office systematically verifies whether that alien is mentioned in the list and/or is a member of a group, undertaking or entity referred to in the list.

If the alien is mentioned in the list or belongs to a group, undertaking or entity referred to in the list, the designated diplomatic or consular post sends the application file to the Aliens Office.

If the alien is not entitled to an exception under the modalities established by the sanctions committee (which may vary from one nationality to another), or if his travel or transit is not necessary in the context of a judicial procedure, normally no visa will be issued to him.

9. *Border controls*

The federal police (which is in possession of the consolidated list) exercises control at the borders as the external borders of the Schengen area. Belgium's external borders are located mainly in airports and ports, with the exception of the Gare du Midi in Brussels where the Eurostar international train arrives from the United Kingdom.

Airports

National airport, Brussels
Deurne
Oostende
Gosselies
Bierset
Wevelgem

Ports

Antwerpen
Oostende
Zeebrugge
Gent/Ghent
Nieuwpoort
Blankenberge

Internal

Station for Eurostar high speed train (Gare du Midi, Brussels)

10. Border controls consist of asking for travel documents, checking the validity of those documents and checking whether the individual in question is the same as the individual appearing in the photograph on the travel document. An inquiry is also made about the purpose of the travel.

11. If an alien arrives without a valid passport or visa, access to the territory is immediately denied.

12. If a traveller who is mentioned in the consolidated list has a valid passport and visa, the federal police consults the list. In theory, that situation cannot arise, because the Federal Department of Foreign Affairs has already carried out a thorough check via the filter of issuing a visa.

13. Denial of access to the territory — on a basis other than that of absence of a valid passport or visa — is the exclusive prerogative of the border inspection service of the Aliens Office. This service may consult the consolidated list and make the necessary determinations if the individual is mentioned in that list.

14. If that is not the case, an expulsion order is taken under article 3 of the law of 15 December 1980 concerning access to the territory and the stay, residence and expulsion of aliens. The alien is then sent back to the country of departure.

15. In some cases, the federal police may detain the alien for 24 hours under article 74/7 of the law of 15 December 1980 concerning access to the territory and the stay, residence and expulsion of aliens.

C. *The Committee would in addition welcome the submission of information regarding implementation by States of paragraph 8 of resolution 1390 (2002) which invites States to report on investigations and enforcement actions related to States' efforts to enforce and strengthen the measures imposed under domestic laws or regulations to prevent and punish violations of the measures referred to in paragraph 2 of resolution 1390 (2002), unless to do so would compromise the investigation or enforcement actions.*

16. Under the provisions of articles 144 bis, ter and quater of the Judicial Code, the federal prosecutor conducts public action in the interests of the proper administration of justice in relation to a range of offences determined by the law and, in addition to this list, on the basis of geographical and security criteria. In the area of security, he is competent, in particular, in relation to offences falling under the definition of terrorism set forth in article 8.1.b of the organic law on the intelligence and security services (cf. para. 23). He is also competent to perform the tasks of coordinating public action and facilitating international cooperation in relation to terrorism.

17. The law, and several binding confidential ministerial circulars, provide that the federal prosecutor must be informed by local prosecution services and the federal police of any relevant criminal investigation and any incident for which there are indications that it may involve terrorist activity.

18. This does not exclude the possibility of some terrorist cases being handled by the judges of local criminal courts, who normally remain in charge of such cases and, at the very least, are the front line actors in terms of suppression.

19. Within the corps of public prosecutors, the public prosecutor of Gand has the task of combating large-scale crimes and is responsible for matters related to terrorism. His powers, in addition to monitoring the coordination of the public prosecutor's office, are more strategic in nature, unlike the more operational powers of the prosecutors in charge of cases within the courts.

20. With regard to exchange of information, several confidential directives set out binding instructions in relation to, inter alia, the exchange of information between the public prosecutor's office and other authorities and services involved in combating terrorism, namely: the police forces, the State security department, the general service for intelligence and the security of the armed forces, other ministerial departments concerned and supranational institutions such as the European judicial unit (Eurojust), the European Police Office (Europol) and foreign police and intelligence services.

21. Furthermore, a task force has been formed informally under the auspices of the federal prosecution service in order to compare information held by the services involved in combating terrorism and allow a rapid exchange of this data. Its members meet once a month to ensure follow-up of information, and, as required, in case of emergency.

22. It consists of, in addition to the federal judge responsible for matters related to terrorism, representatives of the State security department, the general service for intelligence and the security of the armed forces, the inter-service counter-terrorist group (a standing body established by royal decree of 17 October 1991 consisting of representatives of the State security department, the federal police and the general intelligence service which is responsible for constantly assessing the terrorist threat in Belgian territory or against Belgian interests abroad) or the royal prosecutor(s) concerned and members of the federal police (judicial service of the district concerned and terrorist service within the head office of the judicial police).

23. With regard to substantive law, the Belgian penal code does not yet include a specific category for terrorist acts, although the organic law of 30 November 1998 on the intelligence and security services defines terrorism in its article 8.1.b as resort to violence against persons or material interests for ideological or political motives with a view to attaining objectives through terror, intimidation or threats. This definition serves as a reference for the implementation of other provisions of domestic law.

With regard to the incorporation into Belgian law of the obligations imposed by the Council's framework decision of 13 June 2002 on combating terrorism, the Parliament will receive a draft law in the next few weeks, and will approve it before the end of the legislative term (May 2003).

24. Traditionally, prosecution is based on a number of violations of ordinary law associated with an ideological or political motive in the mind of the author.

The most frequently cited offences and attempted offences include:

Criminal association (arts. 322 to 326 of the Penal Code)

Participation in a criminal organization (arts. 324 bis and ter of the Penal Code)

Money-laundering (art. 505 of the Penal Code)

Assassination (arts. 392, 393 and 394 of the Penal Code)

Murder (arts. 392 and 393 of the Penal Code)

Offences involving weapons possession (law on weapons of 3 January 1933, amended several times)

Provisions relating to forged documents (arts. 193, 196, 197, 213 and 214 of the Penal Code)

Various types of destruction of property (arts. 520-530 of the Penal Code)

Possession of explosives with a view to carrying out an attack (law on explosives of 28 May 1965)

25. On the basis of a law of 4 May 1999, Belgian law provides for criminal liability of legal entities and the application to such entities of penalties such as fines, attachment and dissolution.

26. At the procedural level, various recent provisions envisage the possibility of witnesses testifying in partial or complete anonymity and benefiting from measures of protection where they or persons associated with them are put in danger by statements made or to be made. The possibility of testifying through audio-visual means was also authorized recently, allowing the preservation of a degree of anonymity in certain cases for the person making statements.

27. The statute of limitations in criminal matters has recently been increased to 15 years if the offence is a crime which cannot be dealt with under the legal rules on attenuating circumstances.

D. *All measures they have taken to prevent the direct or indirect supply, sale and transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance or training related to military activities.*

28. The Customs Service controls entry into the national territory of goods (including arms of all types and strategic items), vehicles and personal baggage, and the content of aircraft holds.

29. The Customs Service is strongly in favour of more intensive cooperation with foreign customs authorities with regard to the monitoring of suspect consignments (where there is a danger that they will be used for terrorist purposes).

30. National legislation is being formulated with a view to effective monitoring of financial flows (or valuable goods which can easily be converted into cash) which may be used to finance terrorist activities.

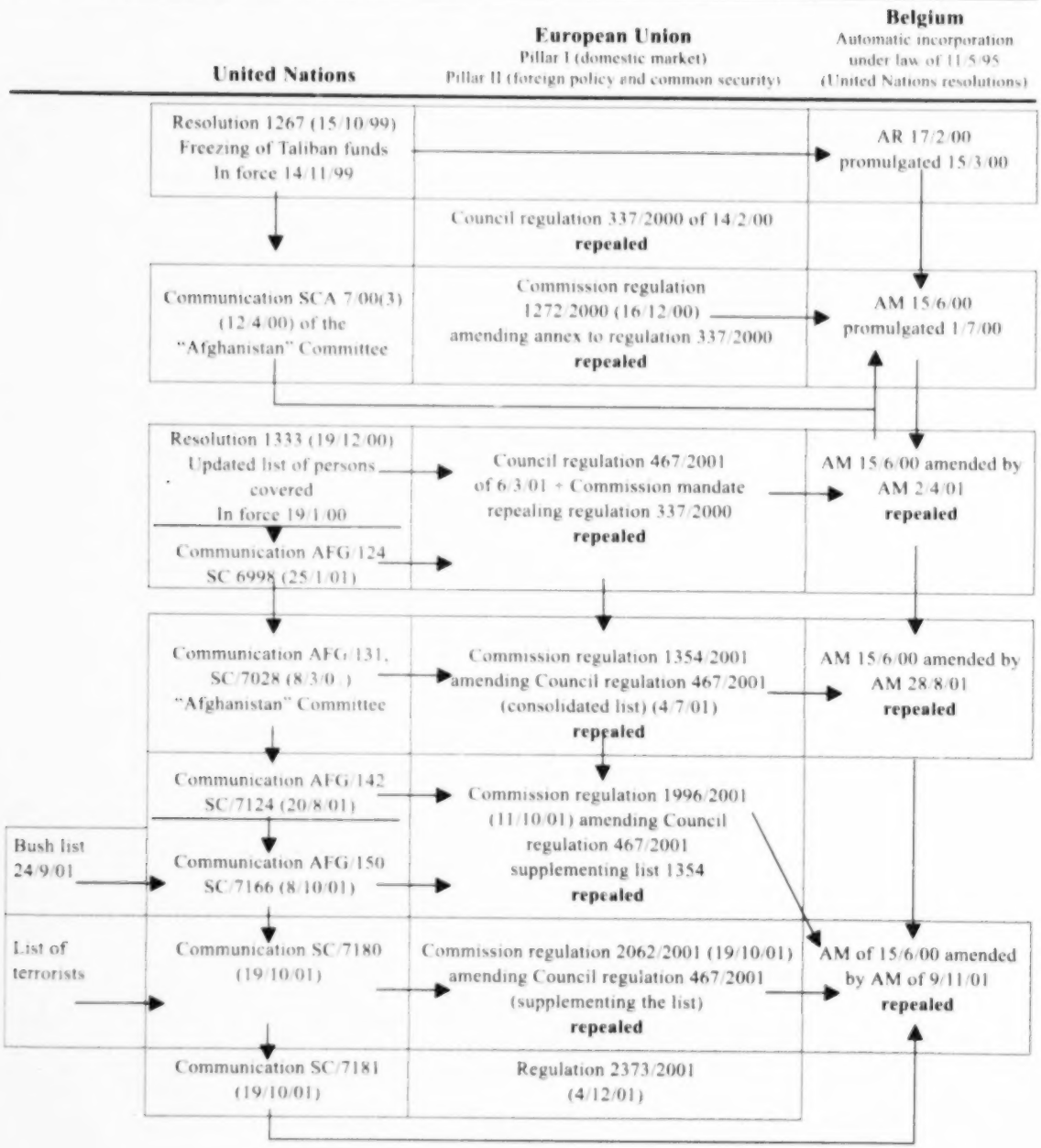
31. The law of 5 August 1991 on the import and transit of weapons, ammunition and materiel specially intended for military purposes and the related technology and the royal decree for implementation of 8 March 1993 prevent the delivery of arms and related materiel to terrorists, individuals or groups. Under these provisions, the import and export of weapons, ammunition and materiel intended for military purposes and related technology are subject to the prior granting of an export licence.

32. At present, the above-mentioned act and royal decree for implementation are under review. A number of items intended for the forces of law and order which so far are not included under the royal decree of 1993 should in future be subject to the prior granting of an export licence.

33. In order to prevent the supply, sale or direct or indirect transfer from Belgian territory of advice, assistance and training relating to military activities, a decree will soon be adopted by the Office of Economic Relations on the basis of the act of 11 May 1995 for the application in Belgian law of United Nations instruments.

Financial embargo
Taliban

Ministry of Finance
Treasury


United Nations
European Union
Pillar I (domestic market)
Pillar II (foreign policy and common security)
Belgium
Automatic incorporation under law of 11/5/95 (United Nations resolutions)
Resolution 1267 (15/10/99) Freezing of Taliban funds In force 14/11/99
AR 17/2/00 promulgated 15/3/00
Council regulation 337/2000 of 14/2/00 repealed
Communication SCA 7/00(3) (12/4/00) of the "Afghanistan" Committee
Commission regulation 1272/2000 (16/12/00) amending annex to regulation 337/2000 repealed
AM 15/6/00 promulgated 1/7/00
Resolution 1333 (19/12/00) Updated list of persons covered In force 19/1/00
Council regulation 467/2001 of 6/3/01 + Commission mandate repealing regulation 337/2000 repealed
AM 15/6/00 amended by AM 2/4/01 repealed
Communication AFG/124 SC 6998 (25/1/01)
Communication AFG/131, SC/7028 (8/3/0) "Afghanistan" Committee
Commission regulation 1354/2001 amending Council regulation 467/2001 (consolidated list) (4/7/01) repealed
AM 15/6/00 amended by AM 28/8/01 repealed
Communication AFG/142 SC/7124 (20/8/01)
Bush list 24/9/01
Communication AFG/150 SC/7166 (8/10/01)
Commission regulation 1996/2001 (11/10/01) amending Council regulation 467/2001 supplementing list 1354 repealed
List of terrorists
Communication SC/7180 (19/10/01)
Commission regulation 2062/2001 (19/10/01) amending Council regulation 467/2001 (supplementing the list) repealed
AM of 15/6/00 amended by AM of 9/11/01 repealed
Communication SC/7181 (19/10/01)
Regulation 2373/2001 (4/12/01)

	United Nations	European Union Pillar I (domestic market) Pillar II (foreign policy and common security)	Belgium Automatic incorporation under law of 11/5/95 (United Nations resolutions)
American Treasury list 46+16 →	Communication AFG 163 SC/7209 (9/11/01) →	Commission regulation 2199/2001 (12/11/01) amending Council regulation 467/2001 (supplementing the list) **repealed** →	AM of 15/6/00 Amended by AM of 23/11/01 promulgated 29/11/01
Executive order Bush →	Communication AFG/176 SC/7252 of 28/12/01 →	Commission regulation 2604/2001 (28/12/01) amending (6th time) Council regulation 467/2001 (adding 4 names to list) **repealed** →	AM of 15/6/00 amended by AM of 21/1/02 **repealed**
Executive order Bush →	Communication AFG/178 SC/7265 of 14/1/02 →	Commission regulation 65/2002 (15/1/02) amending (7th time) Council regulation 467/2001 (adding 4 names to list) **repealed** →	AM of 15/5/00 amended by AM of 22/1/02 **repealed**
	Communication SG/7263 of 14/1/02 →	Commission regulation 105/2002 (18/1/02) amending (8th time) Council regulation 467/2001 **repealed** →	AM of 15/6/00 amended by AM of 25/3/02 **repealed**
	Communications AFG/179 SC/7273 of 16/1/02 AFG 184 SC/7279 of 24/1/02 →	Commission regulation 362/2002 (27/2/02) amending (9th time) Council regulation 467/2001 **repealed** →	AM of 15/6/00 amended by AM of 26/3/02 **repealed**
	Resolution 1390 of 16/1/02 Consolidated list updated on 22 May 2002	Council regulation 881/2002 (27/5/02) → (repeal of 467/2001 and its amendments)	AM of 15/6/00 amended by AM of 1/7/02 promulgated 13/7/02
		Commission regulation 951/2002 (3/6/02) (1st amendment to list) →	
	Consolidated list updated on 8/7/02, 26/8/02 (SC/7490) and 3/9/02 (SC/7494)	Commission regulation 1580/2002 (4/9/02) (2nd amendment to list) →	AM of 15/6/00 amended by AM of 26/9/02 5/10/02
	Consolidated list updated on 11/9/02 SC 7502	Commission regulation 1644/2002 (13/9/02) (3rd amendment to list) →	AM of 15/6/00 amended by AM of 27/9/02 15/10/02
	Consolidated list updated on 30/9/02 SC 7519	Commission regulation 1754/2002 (1/10/02) (4th amendment to list) →	AM of 15/6/00 amended by AM of 24/10/02 promulgated 1/11/02

	United Nations	**European Union** Pillar I (domestic market) Pillar II (foreign policy and common security)	**Belgium** Automatic incorporation under law of 11/5/95 (United Nations resolutions)
	Consolidated list updated on 10/10/02 SC 7525	Commission regulation 1823/2002 (11/10/02) (5th amendment to list) →	AM of 15/6/00 amended by AM of 30/10/02 promulgated 5/11/02
	Consolidated list updated on 22/10/02 SC 7543	Commission regulation 1893/2002 (23/10/02) (6th amendment to list) →	AM of 15/6/00 amended by AM of 12/11/02 promulgated 23/11/02
	Consolidated list updated on 25/10/02 SC 7548	Commission regulation 1935/2002 (29/10/02) (7th amendment to list) →	AM of 15/6/00 amended by AM of 14/11/02 promulgated 28/11/02
	Consolidated list updated on 21/11/02 SC 7574	Commission regulation 2083/2002 (22/11/02) (8th amendment to list) →	AM of 15/6/00 amended by AM of 10/12/02 promulgated 17/12/02

Tuesday, 28 January 2003

AM = ministerial decree
AR = royal decree